



Region 1
490 N. Meridian Road
Kalispell, MT 59901

**DECISION NOTICE
and
Finding of No Significant Impact
for the
PROPOSED OTTER ISLAND FISHERIES CONSERVATION AREA
LAND ACQUISITION**

November 19, 2013

Description of the Proposed Action

Montana Fish, Wildlife & Parks (MFWP) proposes to acquire 147 acres along the Flathead River, 1.5 miles east of downtown Kalispell. Property ownership would be transferred to MFWP by the Confederated Salish and Kootenai Tribes (CSKT). The property, currently referred to as the Lincoln property, in reference to a former owner, would be named the Otter Island Fisheries Conservation Area (FCA) and managed by MFWP for open space habitat and dispersed public recreation.

This transfer of ownership is a result of negotiations that occurred on a previous land transaction involving CSKT and Bonneville Power Administration (BPA). In January 2011, CSKT Fisheries Program used BPA funding to acquire the 147-acre property along the Flathead River mainstem as partial mitigation for fisheries habitat lost due to the construction of Hungry Horse Dam. BPA retained a conservation easement on the property to ensure the permanent protection of the site's fish and wildlife habitat and other ecosystem components and functions.

The purpose of the proposed acquisition is to secure and continue the protection of riparian and wetlands along 1.04 miles of the Flathead River mainstem, 0.98 miles of active side channel, and part of a historical river channel that is now a small spring creek for the benefit of fisheries and wildlife species.

Montana Environmental Policy Act (MEPA) Process and Public Involvement

On September 13, 2013, MFWP released a draft EA for the Otter Island Fisheries Conservation Area Land Acquisition. FWP notified the public about the land acquisition through legal ads, press releases, and emails/letters to all adjoining landowners and other interested publics. The EA evaluated the potential impacts of the following alternatives:

Alternative A: Proposed Action - Accept the Acquisition of the Otter Island Property
MFWP would acquire the Otter Island FCA property and manage the property for the protection of its riparian and wetland areas for the benefit of associated fish and wildlife species.

Alternative B: No Action - the Property Would Remain Under CSKT Ownership
Under the No Action Alternative, MFWP would not acquire the 147-acre Otter Island FCA. The terms of the previously described BPA Conservation Easement would remain in effect to ensure

the protection of the property's fish and wildlife habitat values. CSKT would continue to be responsible for the management and oversight of the property.

Summary of Public Comment

MFWP received a total of 10 emails or letters during the 30-day public comment period. Eight were in favor of the acquisition and two were opposed. Comments in opposition and MFWP's responses are addressed below. One person in favor of the acquisition had several comments regarding management of the property, and those comments are also addressed below.

1. Acquisition Comment:

I think this should be opposed by tribal members because:

There is no public notice responsibility to give tribal members an opportunity to comment. The only requirement is to advertise in Kalispell-area newspapers.

There is no compensation to be provided to the Tribes for donating this property that is worth in excess of \$100,000. The tribal membership should not agree to this exchange without properly being compensated.

Once again, the tribal membership is not being informed of actions being taken on their behalf by the tribal government.

I'm not even sure if this exchange is legal, although I am aware that similar transactions take place all the time.

MFWP Response: The EA states that the property would be donated to MFWP by CSKT, wording which we appreciate could be misleading unless read in context of the entire document. In retrospect we realize a better term might have been used to characterize the transaction. A more accurate wording of the exchange is provided in the second paragraph of the EA, where it states that "[t]his transfer of ownership is a result of negotiations that occurred on a previous land transaction involving CSKT and Bonneville Power Administration (BPA)."

We can now also offer further clarification from the perspective of the Tribal Council. A letter MFWP received on October 8, 2013, from Joe Durglo, Confederated Salish and Kootenai Tribes Council Chairman, states that "[t]he Tribes would like to clarify the context of our conveyance of the *Otter Island Fisheries Conservation Area* to Montana Fish, Wildlife and Parks (MFWP). This parcel is being conveyed in exchange for MFWP's assistance with the Tribes' 2012 acquisition of a parcel in the Swan River drainage. MFWP graciously assisted the Tribes in acquiring the parcel in the Swan through the use of Bonneville Power Administration (BPA) funds that MFWP had available at the time. MFWP's BPA funds were partnered with the Tribes' BPA funds to acquire the Swan parcel. At the time, the Tribes agreed to transfer this Otter Island property to MFWP in exchange once the State had completed its due diligence and any necessary environmental analysis. Both properties have BPA conservation easements on them which require both agencies to manage them for fish and wildlife benefits."

2. Acquisition Comment:

Water rights *Downstream are 6 properties, on what the plan terms Spring Creek, between the north culvert on Anderson Lane and the Flathead River. The last time I spoke with a DNRC rep this was an unnamed stream. Five of these properties and a commercial CSA facility actively use this stream. The stream passes under what the plan terms the maintenance road,*

*spreads out, then coalesces at the north culvert on Anderson Lane. Until midsummer the stretch from the Flathead to the south culvert on Anderson Lane is easily navigable. We have year round flow which at times becomes blocked by debris accumulation at the maintenance road. **We have always had a verbal agreement with Lincoln and then with the tribe to clear debris anytime needed.** I don't see anything in this plan that acknowledges downstream water users, provides routine clearing of debris or allows us to keep the water flowing*

Parking – Old Steel Bridge *There is already not enough parking at Old Steel Bridge. On weekends throughout the summer both lots are full and cars are parked in the grass and around the sides of the parking lot.*

Access/Parking – Conrad Drive *The proposal is to eliminate instead of improve access on Conrad Drive. Currently there is unofficial parking for 2 cars along with a pedestrian access. Car(s) are parked at this point constantly. **There is a serious need for additional parking at this location.***

Transients *There are frequently transients on this property. The SE corner of Otter Island is problematic. I don't see anything in the plan that even acknowledges this as being a chronic situation, in fact, the plan affords transients more privacy. The first week in October there was a multi tent/lean to camp complete with very loud and drunk men. Your plan says nothing about how you intend on routinely policing this area.*

Lack of Equine access *Horses are currently allowed. Tax dollars should provide more access not more restriction.*

***I think the MFWP has forgotten what the P stands for.** This is an easy FCA land grab. MFWP is then shirking out of any monetary commitment by blocking access, deferring maintenance, restricting activity and piggybacking on existing parking. This is a wrongheaded approach. Fix the Conrad access, create parking, provide bike racks if you want foot traffic only, encourage multi use and riparian respect. **I am against the transfer of this property until the above issues are addressed.** If you want more FCA then give something in return. **The current plan restricts taxpayer use to able bodied hikers or fishermen.** Everything does not have to be pristine, restoring and protecting habitat and general public use can be accomplished simultaneously. Fish don't pay taxes – people pay taxes.*

MFWP Response: This property was purchased with funds from Bonneville Power Administration (BPA) for the protection of fisheries and fish habitat. BPA retains a conservation easement on this property that severely restricts activities that can occur on the property. Public use is allowed only in a manner that is consistent with protecting the property primarily for fish and wildlife benefits. Management of this property therefore differs from other types of FWP acquisitions: it is not a state park nor is it a fishing access site. It is a unique administrative property type known as an FCA.

Water Rights: MFWP acknowledges and respects all legal water rights and will do nothing to interfere with appropriate execution of those rights by any property owner. MFWP was unaware of the issue with debris in the side channel of the Otter Island acquisition that may occasionally block flow to downstream water users. Now having received notice, MFWP is not opposed to occasional removal of debris after high water events if it is preventing water from flowing down

the side channel/spring creek area. The culvert under the causeway across the slough is currently failing. The causeway and the failing culvert contribute to debris buildup and flow blockage. MFWP mentions in the Management Plan that one option may be to remove this causeway and associated culverts completely. This option would eliminate any issues for downstream water users, and debris removal would most likely no longer be necessary.

Parking and Improved Public Access from Conrad Drive: Parking can be an issue at Old Steel Bridge Fishing Access Site, especially during the busy summer river recreation months. Unfortunately at this time, there is no other parking available for access to this property. The access off of Conrad Drive is unsafe due to the closeness of the corner to the south of the access road and limited visibility when entering Conrad Drive from the established access. Other options for parking to access this site will be explored in the future, but for now the only option is parking at the established sites on Old Steel Bridge FAS.

Transients: MFWP is aware of the transient use on this property. Our Management Plan prohibits overnight camping on the property, and our wardens will be enforcing this regulation as necessary. Having this property in MFWP ownership will allow for consistent enforcement of the area from Old Steel Bridge south onto Otter Island FCA and should reduce illegal trespass and use.

Horse Use: Acquisition and subsequent management costs are covered by BPA mitigation dollars, not state taxpayer money. With BPA's restrictive easement on the property and because the property is to be managed primarily for fish and wildlife benefits, MFWP and BPA do not believe that equestrian use of the property at this time is consistent with the purposes of the agreement by which this property was purchased initially by CSKT.

3. Management Comments:

For the most part, you have very reasonable rules, but I would caution you to reconsider leaving temporary tree & ground blinds up for 48 hrs. It is not enforceable; it will result in individual hunting "territories"; it conflicts with Owen Sowerwine Natural Area (OSNA) rules (no blinds, stands, structures, tents, etc. can be left overnight) that are ineffect just south of Otter Island; and it is man power intensive to monitor use or remove the tree stands; then, what do you do with the stand, if FWP removes it?

Another issue could be the "hunting of non-game animals such as ground squirrels will be prohibited". Are Eastern Fox Squirrels and Eurasian Collared Doves (both, exotic and introduced species) classified as Nongame or Exotics that can be shot (killed) on sight?? Exotics can be removed any time on OSNA (even dogs & cats!) I'm sure these species (Fox Squirrels/ Collared Doves) are on the Otter Island property...they can be found on OSNA at or near the North section line of sec #16.

MFWP Response: MFWP agrees that allowing hunters to leave temporary tree stands and ground blinds up for 48 hours may cause problems for enforcement and result in blinds remaining on the property indefinitely. The public use rule in the Management Plan that states "[t]emporary tree stands or ground blinds may be placed for up to 48 hours" will be changed to read "hunting blinds must be removed or dismantled daily." Where the Plan states "[n]o screw-in tree steps may be used to access tree stands, only strap-on steps or climbing-stick-type climbing

aids” will be retained, and this sentence will be added at the end of the section: “Hunting blinds may not be constructed by cutting or otherwise damaging woody vegetation on the property.”

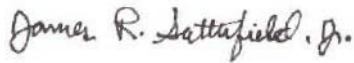
Eastern fox squirrels and Eurasian collared doves are classified as exotics and not nongame animals, so removal of these species would not be prohibited under the current regulations.

MFWP Recommended Alternative and Final Decision Recommendation

In reviewing all the public comment and other relevant information, and evaluating the environmental effects, I recommend that MFWP pursue acquiring the Otter Island Fisheries Conservation Area and recommend that the MFWP Commission approve the proposed action. This action will also require the approval of the Montana Land Board.

Through the public review process described above, MFWP found no significant impacts on the human or physical environments associated with this proposal. Therefore, the EA is the appropriate level of analysis, and an environmental impact statement is not required.

Noting and including the responses to public comments, this decision notice together with the draft EA and revised Management Plan will serve as the final documents for this proposal. MFWP believes the completion of this project is in the best interests of protecting water quality and aquatic resources associated with the Flathead Lake and River System; it would provide opportunities to manage and improve habitat for fish and wildlife, and it would provide additional recreational opportunities for the public.



James R. Satterfield Jr., Ph.D.
Regional Supervisor

November 19, 2013
Date